

No. 85-499

Supreme Court, U.S.

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WILLIAM F. SPANIEL, JR.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

B. H. PAPASAN, *et al.*,

Petitioners,

v.

WILLIAM A. ALLAIN

GOVERNOR, STATE OF MISSISSIPPI, *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of
Appeals For The Fifth Circuit

**BRIEF ON THE MERITS FOR
RESPONDENTS DICK MOLPUS AND
CONSTANCE SLAUGHTER-HARVEY**

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of the State of Mississippi

Pro Se

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STATEMENT OF THE CASE

These respondents, Dick Molpus and Constance Slaughter-Harvey (hereinafter "the Secretary of State Respondents"), are filing separate briefs because the Attorney General of the State of Mississippi—who is also a Respondent and, with the other respondents, is hereinafter referred to as "the Attorney General Respondents"—has declined to present to this Court the views and position of the Secretary of State Respondents.

SUMMARY OF THE ARGUMENT

Respondents are the statutorily designated supervisors of Mississippi's school lands trust. The trust is valid, subsisting, and, in the Chickasaw Cession, it is violated annually. The trust beneficiaries receive a fraction of the income to which they are admittedly entitled, in violation of the law of trusts. Furthermore, these acts are discriminatory and have no rational basis. The prospective injunctive relief sought by the Petitioners should be granted.

ARGUMENT

A. INTRODUCTION

In Mississippi, where federal funds make up a larger percentage of school funding than in any other state, a key element of school funding is the sixteenth section school lands trust established by Congress. By failing to provide the children of the Chickasaw Cession the full benefit of this trust, the State has failed to comply with its obligations as trustees of the school lands trust. Furthermore, Mississippi's schoolchildren are divided into two groups, one with a fully funded

trust and one without, and this denial of equal treatment to the children of the Chickasaw Cession is without a rational basis.

The Secretary of State Respondents are the state officials most directly charged with supervision of Mississippi's school lands trust. Respondent Dick Molpus, the Secretary of State of Mississippi, is the elected public official presently charged with supervision and monitoring of the state's management of the corpus from this trust. *See* Miss. Code Ann. §7-11-2 (Supp. 1985) ("(T)he duties, responsibilities and title of (the office of the state land commissioner) are transferred to the office of secretary of state, who shall perform the duties heretofore performed by the elected state land commissioner for the State of Mississippi."); Miss. Code Ann. §7-11-11 (Supp. 1985) ("The secretary of state shall have charge of . . . all . . . public lands belonging to or under the control of the state"); Miss. Code Ann. §29-3-1(1) (Supp. 1985) ("The board of education (of each county) under the general supervision of the state land commissioner, shall have control and jurisdiction of said school trust lands and of all funds arising from any disposition heretofore or hereafter made.) (J.A.71). Respondent Constance Slaughter-Harvey, the Assistant Secretary of State of Mississippi responsible for the Public Lands Division of the Secretary of State's office, is the member of the Secretary of State's staff immediately responsible for matters involving the sixteenth section lands trust. *See* Miss. Code Ann. §7-11-6 (Supp. 1985) ("The secretary of state shall appoint a competent attorney to be designated as an assistant secretary of state, who shall have the responsibilities of per-

forming the function of the former state land office. . .").

The injury and discrimination visited upon the Chickasaw Cession and its schools has been a particular concern to the Secretary of State Respondents throughout their tenure in office. *See* State Auditor and Secretary of State of Mississippi, *Special Report on Chickasaw Cession School Districts* (1984) (J.A. 36-39) (hereinafter "*Chickasaw Cession Report*") (report by Respondent Molpus and by state auditor discussing lack of trust income in Chickasaw Cession counties).

B. THE CHICKASAW CESSION SCHOOLCHILDREN DO NOT RECEIVE THE TRUST INCOME TO WHICH THEY ARE ENTITLED

Prior to this case no state official of the State of Mississippi, charged as trustees of the school lands trust for the benefit of the schools in the Chickasaw Cession, has ever failed to recognize the validity and viability of the trust. The obligations imposed on the state by the trust have never been questioned. The Secretary of State expressly acknowledged the obligations of trustee by co-signing a 1984 report on the Chickasaw Cession schools. For several reasons, the legislature in 1985 confessed the breach of trust, gave a partial remedy of the breach, but this action did not completely remedy the wrong. The claim of breach of trust in this action is based upon the breach of these acknowledged duties. As the state officials charged with the administration of the school lands trust in Mississippi, in this and other contexts, these respondents must assert their validity. Hence, this separate brief.

To properly understand the claims brought on behalf of the Chickasaw Cession schoolchildren, it is

crucial to keep in mind that the historical antecedents to the present plight of the schoolchildren—though fascinating—are not critical to evaluating the validity of their trust claims. This lawsuit concerns, if you will, the present tense only. At present, there exists a school lands trust which state officials, as successor trustees, have a current obligation to annually pay proceeds in favor of the beneficiary school children in an amount commensurate with what the original corpus would have generated had the state preserved rather than converting the corpus. The litany of prior mismanagement affects these current trustees' duty to provide proper trust proceeds today and tomorrow not one iota. It is this present trustees' duty which is being breached, and it will continue to be breached in the future unless the schoolchildren are granted prospective injunctive relief to prevent the continuing breach of these trustee obligations.

There can be little doubt but that the school lands trust is a binding, subsisting trust that can be enforced here to remedy the unconscionable deprivation suffered by the Chickasaw Cession schoolchildren. It was clearly the intent of Congress to foster public education and to provide an inviolate basis for its preservation. Trustee state officials who properly administer the trust help prevent public education from suffering the sort of fiscal disgrace which is visited upon the schools and schoolchildren of the Chickasaw Cession. Based upon an estimate from 1983 figures, the Chickasaw Cession schools should have received approximately seven million dollars in 1983, instead of the sixty-six thousand dollars they were given. Cognizance of the untenable fiscal situation in the Chickasaw Cession schools prompted publication by this

office of the Special Report on the Chickasaw Cessions Schools. Our aim in issuing that report was to prompt the Mississippi Legislature to furnish relief to those schools and schoolchildren who are the victims of the breaches by state officials of the school lands trust.

Following that report and the initiatives by the legislative delegation from the Chickasaw Cession area, the Mississippi Legislature passed a bill providing for increased payments to the Chickasaw Cession schools in lieu of the school lands trust income. The bill straightforwardly admitted that until that time the Chickasaw Cession schools had been receiving completely inadequate income. The bill attempted to ameliorate conditions, but despite well-intentioned efforts fell short of correcting the current and ongoing breach of the school lands trust obligations by trustee state officials. In place of the sixty-six thousand dollars previously allotted the Chickasaw Cession schools, the new bill provided for one million dollars to be paid in 1985, that amount to be increased each of the next four years by one million dollars, so that in 1989 the Chickasaw Cession schools would receive five million dollars. Aside from the fact that the ultimate amount is still two million dollars shy of the sum required in 1983, there is simply no guarantee that the promised appropriation will be made each year. In addition, it is anticipated that the Choctaw Cession trust proceeds will increase dramatically because of a renewed focus on sound trust management. Therefore, the Chickasaw-Choctaw disparity will in fact widen in the next decade. Only an injunction of the nature requested in

this lawsuit can prevent the present and future breaches of the school lands trust by state officials.

C. THE CHICKASAW CESSION SCHOOLCHILDREN ARE BEING DENIED EQUAL PROTECTION

The 1984 report by Respondent Dick Molpus and State Auditor Ray Mabus on Chickasaw Cession schools sets forth in graphic terms the discrimination suffered by the Chickasaw Cession's schoolchildren. *Chickasaw Cession Report* (J.A.37-46). The report compared 1982 and 1983 receipts from the school lands trust for adjoining counties completely inside and completely outside the Chickasaw Cession. For example, Lafayette County, within the Cession, received 36¢ per acre from the trust, while Grenada County, outside the Cession, received \$41.83 per acre. *Chickasaw Cession Report* (J.A. 37-38.) By increasing the funding to the Chickasaw Cession in 1985, the state legislature reduced but did not erase this discrimination. In the first place, the 1985 legislation did not provide sufficient funding to give the Chickasaw Cession school children income equivalent to the fully funded trust income received in the rest of the state. (P.B. 11-12).¹ In the second place, continued funding of the 1985 legislation is at the discretion of a legislature that is desperately strapped for funds.

The discrimination suffered by the Chickasaw Cession schoolchildren clearly divides the schoolchildren of Mississippi into two groups, and denies one group the benefits conferred upon the other group. As this Court has recently stated, "The Equal Protection

¹ References to Petitioners' Brief on the Merits will be designated by (P.B. —).

Clause of the Fourteenth Amendment . . . is essentially a direction that all persons similarly situated should be treated alike." *Cleburne v. Cleburne Living Center*, — U.S. —, 87 L.Ed.2d 313, 320 (1985). To treat individuals differently without violating restrictions of equal protection, the state must show that the individuals are relevantly different; for that reason, equal protection requires that government classifications be rationally-related to a legitimate state interest.

There is no principled way to distinguish the Chickasaw Cession schoolchildren from schoolchildren in the rest of the state. With the exception of the school lands trust, schools in both sections of the state are similarly funded.

CONCLUSION

The Secretary of State Respondents are the Mississippi public officials primarily charged with administration of the school lands trust in the state, including the Chickasaw Cession School Lands Trust. Heretofore, those trusts were recognized by the state as valid and subsisting. Any view to the contrary should be rejected by this Court. This separate brief is filed to urge the Court to uphold the trusts and to grant the prospective injunctive relief sought on behalf of the schoolchildren of the Chickasaw Cession. All public schoolchildren in Mississippi, regardless of where they live, should have the opportunity for an equal quality education.

Respectfully submitted,

Dick Molpus
Secretary of State
of the State of Mississippi
Pro Se

Constance Slaughter-Harvey
Assistant Secretary of State
of the State of Mississippi
Pro Se

CERTIFICATE OF SERVICE

WE, DICK MOLPUS AND CONSTANCE SLAUGHTER-HARVEY, pro se respondents, do hereby certify that we have this day mailed, postage prepaid, three true and correct copies each of the Brief on the Merits to:

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This, the 3rd day of March, 1986.

/s/ Dick Molpus
DICK MOLPUS
Secretary of State
of the State of Mississippi

/s/ Constance Slaughter-Harvey
CONSTANCE SLAUGHTER-HARVEY
Assistant Secretary of State
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